

REMARKS

In response to the examiner's rejection under 35 USC 103 of claims 1-33 as being unpatentable over US Patent No. 6,748,416 to Carpenter et al. ("Carpenter") and US Patent No. 6,687,229 to Kataria et al. ("Kataria"), Applicant respectfully traverses the rejection. The examiner has not established a *prima facie* case of obviousness for the reasons set forth below and therefore the rejection must be withdrawn.

Claims 1, 17, 24

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). *See M.P.E.P.* § 2143.

For each independent claim, the combination of Carpenter and Kataria do not teach or suggest all of the claim limitations of the independent claims. For example, claim 1 recites "said communicating comprising exchanging messages with said neighboring proxy servers" which the examiner alleges is taught by Carpenter. However, Carpenter does not teach this element. Carpenter discloses a client-side method and apparatus for network mediated services in which an "intermediary broker automatically detects performance imbalances and/or failures (complete or partial) and dynamically switches to an alternate intermediate server.." *See Carpenter at Col. 3:39-44*. Carpenter also discloses a client agent and a policy server. However, nowhere does Carpenter teach or suggest the exchange of messages between the proxy servers since Carpenter requires a client agent, policy server or an intermediate broker. Kataria also does not teach or suggest this element.

In addition, the combination of Carpenter and Kataria do not teach or suggest "activating an identified neighboring proxy server in response to said communicating to form a portion of a hierarchical overlay network structure of interconnected proxy servers that establish optimum data paths through the overlay network for supplying the data stream to said requester" as set

forth in the independent claims. The examiner admits that Carpenter does not teach or suggest this element. *See Office action at pg. 2.* The examiner asserts that Kataria discloses this element. Kataria discloses shortest path selection in a network as shown in Figure 12. However, nothing in Kataria discloses “activating an identified neighboring proxy server in response to said communicating” which means that the system must use proxy to proxy messages (said communicating in the claim fragment above) and then activate an identified neighboring proxy server. Thus, this element is not taught or disclosed by either Carpenter or Kataria.

Therefore, the examiner has not established a prima facie case of obviousness and the rejection is improper and must be withdrawn.

Claims 2-16, 18-23 and 25-33

The prima facie case of obviousness of these claims have not been established for at least the same reasons as the independent claims above.

CONCLUSION

In view of the above, it is respectfully submitted that Claims 1-33 are allowable over the prior art cited by the Examiner and early allowance of these claims and the application is respectfully requested.

The Examiner is invited to call Applicant’s attorney at the number below in order to speed the prosecution of this application.

The Commissioner is authorized to charge any deficiencies in fees and credit any overpayment of fees to Deposit Account No. 07-1896.

Respectfully submitted,

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Dated: November 21, 2007

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